

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

WILEY ZACHARY CARROLL

PLAINTIFF

VS.

CIVIL ACTION NO. 4:11CV69-CWR-FKB

MAJOR BRET MIZE, ET AL.

DEFENDANTS

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

This cause comes on this date on the *sua sponte* motion of the Court to dismiss this cause of action because of Plaintiff's failure to prosecute his claims. Natural Gas Pipeline Co. v. Energy Gathering, Inc., 2 F.3d 1397, 1407 (5th Cir. 1993). Although Plaintiff was incarcerated at the time he filed this action pursuant to 42 U.S.C. § 1983, he has since become "free world." His Change of Address [22], filed June 27, 2012, indicated that he is no longer incarcerated. Nevertheless, Plaintiff failed to appear for an Omnibus Hearing held on August 14, 2012 and failed to respond to an Order to Show Cause [24] entered on August 16, 2012, requiring a written response by August 30, 2012.¹ By failing to appear at the Omnibus Hearing held on August 14, 2012, and by failing to respond to the Order to Show Cause entered August 16, 2012, Plaintiff has failed to prosecute this case. For these reasons, the undersigned recommends that Plaintiff's claims be dismissed without prejudice for failure to prosecute. Fed. R. Civ. P. 41(b).

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and

¹Both the Order setting the Omnibus Hearing [23] and the Order to Show Cause [24] were mailed to the address given by Plaintiff in his Change of Address [22].

legal conclusions accepted by the district court. 28 U.S.C. §636, Douglass v. United Services Automobile Association, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

RESPECTFULLY SUBMITTED, this the 19th day of October, 2012.

s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE